

**BY ORDER OF THE
SECRETARY OF THE AIR FORCE**

AIR FORCE INSTRUCTION 51-904

30 JUNE 1994



**AIR FORCE MATERIEL COMMAND
Supplement 1**

29 DECEMBER 1994

Law

**COMPLAINTS OF WRONGS UNDER ARTICLE
138, UNIFORM CODE OF MILITARY JUSTICE**

COMPLIANCE WITH THIS PUBLICATION IS MANDATORY

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OPR: HQ USAF/JAG (Lt Col Carole Cheatham)

Certified by: HQ USAF/JAG (Mr Richard A.
Peterson)

Supersedes AFR 110-19, 7 November 1988.

Pages: 5
Distribution: F

This instruction implements AFR 51-9, *Civil Law for Individuals*. It explains how to make, send, and consider made under Article 138, Uniform Code of Military Justice (UCMJ). This instruction does not apply to Air National Guard members when not on active duty and not subject to the UCMJ.

(AFMC) This supplement implements AFR 51-9, *Civil Law for Individuals*, and AFI 51-904. It expands on the guidance provided in the Air Force instruction, and applies to all offices of record within AFMC. It does not apply to Air National Guard members when not on active duty and subject to the Uniform Code of Military Justice.

SUMMARY OF REVISIONS

This is the initial publication of AFI 51-904, replacing AFR 110-19. It adds several definitions.

(AFMC) This supplement supersedes AFR 110-19/AFMC Sup 1, and provides updated instructions.

AFI 51-904, 30 June 1994, is supplemented as follows:

1. Statutory Authority. This instruction implements Article 138, UCMJ which states: "Any member of the armed forces who believes himself wronged by his commanding officer, and who, upon due application to that commanding officer, is refused redress, may complain to any superior commissioned officer, who shall forward the complaint to the officer exercising general court-martial jurisdiction over the officer against whom it is made. The officer exercising general court-martial jurisdiction shall examine into the complaint and take proper measures for redressing the wrong complained of; and shall, as soon as

possible, send to the Secretary concerned a true statement of that complaint, with the proceedings had thereon."

2. Terms Explained:

2.1. Application for Redress. The member's written request to the commander for redress of the perceived wrong.

2.2. Commander or Commanding Officer. A commissioned officer commanding an installation or organization to which the member is assigned or attached. The Chiefs of Staff of the Air Force and Army, the Chief of Naval Operations, and the Commandant of the Marine Corps are not commanding officers.

2.3. Member of the Armed Forces. A member of the US Army, Navy, Air Force, Marine Corps, or Coast Guard on active duty or inactive duty for training and subject to the UCMJ. Only a member of the Armed Forces may submit applications for redress under Article 138.

2.4. Officer Exercising General Court-Martial Authority (GCMA). The officer exercising general court-martial authority over the commander against whom the complaint is made.

2.5. Redress. Any lawful action which restores to the member any rights, privileges, property, or status to which the member would have been entitled had the wrong not occurred.

2.6. Superior Commissioned Officer. Any commissioned officer who is senior, by grade or rank, to the commanding officer who refused the member's request for redress.

2.7. Wrong. A discretionary act or omission by a commander, that adversely affects the member personally, and that, for example, is:

2.7.1. In violation of law or regulation.

2.7.2. Beyond the legitimate authority of that commander.

2.7.3. Arbitrary, capricious, or an abuse of discretion.

2.7.4. Clearly unfair (for example--selective application of administrative standards/action, either in the type of standard/action applied or in the severity of the penalty imposed, which results in a clearly unfair application of the administrative standard/action).

3. Scope of the Complaint Process. The following complaints are not recognized as Article 138 complaints:

3.1. Acts or omissions affecting the member that are not initiated or ratified by the member's commander.

3.2. Complaints relating to military discipline under the UCMJ, including Article 15 nonjudicial punishment, except complaints involving deferral of post-trial confinement.

3.3. Complaints relating to an action initiated against any Air Force member, where the governing directive for such action requires that the Office of the Secretary of the Air Force take final action.

3.4. Complaints against GCMA's for failing to resolve Article 138 complaints properly. However, a complaint may be filed for not forwarding a complaint to the Secretary.

3.5. Complaints filed to seek disciplinary action against another.

3.6. Complaints about a commander's action when that action implements the recommendation of a board authorized by Air Force regulations and AFI 51-602, *Boards of Officers*, governs the board.

3.7. Complaints Not Normally Reviewed under Article 138. Under Article 138, the officer exercising general court-martial authority over the commander complained of must take proper measures to resolve the complaint. In many cases, there already exist by law or regulation, specific established channels to accomplish this objective. Such areas include, but are not limited to, a complaint concerning:

3.7.1. A performance report or evaluation system.

3.7.2. An assessment for pecuniary liability.

3.7.3. A suspension from flying status.

3.7.4. While recognizable, such complaints generally are not reviewed through the Article 138 process. Even though the wrong complained of could be redressed by the Board for Correction of Military Records or the Air Force Discharge Review Board, that fact does not make an Article 138 complaint inappropriate.

4. Procedures and Responsibilities:

4.1. Member's Application for Redress. A member who believes himself or herself wronged by the action of his or her commander, before submitting a complaint under Article 138, must apply in writing through channels to that commander for redress of the grievance. A complaint (in writing) to that commander, or his or her designated representative, is sufficient. Absent unusual circumstances, the member must apply for redress within 180 days of the member's discovery of the wrong complained of. The complaint should contain all available supporting evidence.

4.2. Commander's Responsibilities. The commander complained of may consider other reliable evidence, in addition to matters submitted by the member. Attach such additional evidence to the file so the member and the commander's GCMA can review it. Promptly notify the member in writing that:

4.2. (AFMC) Immediately upon learning of the existence of an Article 138 complaint, staff judge advocates advise HQ AFMC/JA of the name, rank, and organization of the parties; the general nature of the complaint; and the proposed method of investigating the complaint.

4.2.1. The redress requested is granted.

4.2.2. The redress is denied because, in the commander's opinion, it is not warranted, the complaint is not recognized under Article 138 (see paragraph 3.), the complaint is recognized but not reviewed under Article 138 because there is another complaint channel available (see paragraph 3.7.), or the complaint is untimely (see paragraph 4.1.).

4.2.3. The commander lacks authority at the time to grant the redress because the subject matter is pending before another authority. Hold the request for further consideration at the conclusion of the other authority's action.

4.2.4. The commander lacks authority to grant the redress for a reason other than noted in 4.2.3. Return the application, including supporting evidence, and inform the member which office or officer, if any, has authority to grant the redress sought.

4.2.5. In all cases, keep a copy of the request, the supporting evidence, and the action taken.

4.3. Member's Complaint of Wrongs. If the commander refuses a properly submitted request for redress, the member may then submit the complaint directly, or through any superior commissioned officer, to the officer exercising general court-martial authority over the officer against whom the complaint is made.

4.3.1. Unless there are unusual circumstances, the member must submit this complaint within 90 days of receiving the commander's refusal of redress.

4.3.2. The member must attach to the complaint a copy of the application for redress with its attachments, if any, and the commander's refusal of the redress.

4.4. Forwarding the Complaint. An intermediate commander or any other superior commissioned officer receiving such a complaint will immediately forward the file to the GCMA over the officer against whom the complaint is made. In so doing, the individual will:

4.4.1. Add pertinent documentary evidence, if not already in the file.

4.4.2. Make no comment on the merits of the complaint in the forwarding letter, but, where appropriate, include information about availability of witnesses or evidence.

4.5. GCMA's Responsibilities. The GCMA will conduct or direct further investigation as deemed appropriate and will act, based on the facts and circumstances of the complaint and any investigation. In addition:

4.5. (AFMC) Staff judge advocates review any investigation before the officer exercising general court-martial jurisdiction takes final action. Use AFI 90-301, *Inspector General Complaints*, as a guide for any investigation or inquiry.

4.5.1. If a complaint concerns nonrecognized areas described in paragraph 3., the GCMA will so inform the member according to paragraph 4.5.3.

4.5.2. When the complaint concerns areas, such as those described in paragraph 3.7., the GCMA must make an informal review to determine whether the complaint is, in fact, subject to resolution in other established channels. In those cases where other channels exist, the commander may refer the member to those channels. This does not make such complaints nonrecognizable under Article 138, UCMJ, but rather identifies, for appropriate processing, existing channels for grievances where relief is routinely granted in meritorious cases. In such cases, the subject matter of the complaint may already be under consideration within those channels. A decision to refer the member to those channels constitutes final action and paragraph 4.5.3. and paragraph 4.5.4. must be followed.

4.5.3. In all cases, the GCMA must inform the member in writing of both the action taken on the complaint and the reasons for that action. The GCMA returns any documentary evidence or other material submitted by the member and retains two complete copies of the file, including copies of the response to the member.

4.5.4. After taking final action and notifying the member, the GCMA sends one of the complete copies of the file to HQ USAF/JAG, 1420 Air Force Pentagon, Washington, DC 20330-1420, for Secretarial review and disposition.

4.5.4. (AFMC) Forward one additional copy of the entire case file to HQ AFMC/JAG.

5. Delegation Prohibited. The GCMA may not delegate the authority to act on complaints under Article 138, UCMJ.

NOLAN SKLUTE, Maj General, USAF
The Judge Advocate General